



**BILLING CODE: 4410-09-P**

**UNITED STATES DEPARTMENT OF JUSTICE  
DRUG ENFORCEMENT ADMINISTRATION**

**JOHN R. KREGENOW, D.D.S  
DECISION AND ORDER**

On October 29, 2014, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to John R. Kregenow, D.D.S. (Registrant), of Milwaukee, Wisconsin. GX 1, at 1. The Show Cause Order proposed the revocation of Registrant's DEA Certificate of Registration AK8212348, and the denial of any pending applications for renewal or modification of the registration, on the ground that he lacks authority to handle controlled substances in Wisconsin, the State in which he is registered with DEA. *Id.* (citing 21 U.S.C. §§ 823(f) & 824(a)(3)).

The Show Cause Order specifically alleged that on September 3, 2014, the Wisconsin Dentistry Examining Board (hereinafter, the Board) issued an Order of Summary Suspension, suspending Registrant's dental license and that the Order "is still in effect." *Id.* The Show Cause Order thus asserted that "DEA must revoke [Registrant's] registration based upon [his] lack of authority to handle controlled substances in the State of Wisconsin."<sup>1</sup> *Id.* at 1-2 (citing 21 U.S.C. §§ 802(21), 823(f) and 824(a) (3)).

On November 6, 2014, a Diversion Investigator (DI) attempted to serve the Show Cause Order on Registrant by travelling to his residence but no one was home. GX 6, at 2. (Declaration of Diversion Investigator). The DI then left at Registrant's residence an envelope which

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<sup>1</sup>The Show Cause Order also notified Registrant of his right to request a hearing on the allegations or to submit a written statement in lieu of a hearing, the procedure for electing either option, and the consequence for failing to elect either option. *Id.* at 2 (citing 21 CFR 1301.43).

contained a copy of the Show Cause Order, a Voluntary Surrender Form, and written “instructions describing [Registrant’s] options regarding his . . . registration.” *Id.*

The next day, the DI mailed a copy of the Show Cause Order by certified mail, return receipt requested, addressed to Registrant at his residence. *Id.* The same day, the DI also e-mailed an electronic copy of the Order to the two previous e-mail addresses associated with his registration.<sup>2</sup> *Id.*

On December 8, 2014, the DI received a return receipt card for the mailing which was signed by Registrant. *Id.* The card was dated December 3, 2014. *Id.*, *see also* GX 5, at 2. Based on the signed return receipt card, I find that the Government accomplished service on December 3, 2014.

Based on the Government's representation that since the date of service, neither Registrant, nor any person purporting to represent him, “has requested a hearing or otherwise corresponded with DEA” regarding the Show Cause Order, and finding that more than 30 days have now passed since the date of service, I find that Registrant has waived his right to either request a hearing on the allegations of the Show Cause Order or to submit a written statement in lieu of a hearing. *See* 21 CFR 1301.43(c) & (d). I therefore issue this Decision and Final Order based on the record submitted by the Government. *See* 21 CFR 1301.43(e). I make the following findings.

### **FINDINGS of FACT**

Registrant is the holder of DEA Certificate of Registration AK8212348, pursuant to which he is authorized to dispense controlled substances in schedules II through V as a

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<sup>2</sup> The Government provided no further information regarding the adequacy of its attempts to serve the Show Cause Order by e-mail, and in any event, under the Agency’s cases, except for where the intended recipient is a fugitive, e-mail is to be used only after the traditional methods of service have been used and been ineffective at accomplishing service. *See Emilio Luna*, 77 FR 4829, 4830 (2012); *Robert Leigh Kale*, 76 FR 48898, 48899-900 (2011).

practitioner, at the registered address of 6015 West Forest Home Ave., Unit 1, Old Grove Shopping Center, Milwaukee, Wisconsin. GX 2. His registration does not expire until December 31, 2015. *Id.*

On September 3, 2014, the Board summarily suspended Registrant's dental license, finding "probable cause to believe [he] violated the provisions of Wis. Stat. Ch. 447" and that "the public health, safety or welfare imperatively requires emergency action." GX 3, at 10-11. While Registrant was entitled to a hearing to challenge the summary suspension, *id.* at 11, on March 11, 2015, Registrant waived his right to a hearing on the allegations and consented to the entry by the Board of a Final Decision and Order revoking his medical license. Stipulation, at 1, *In re John R. Kregenow, D.D.S.* (Wis. Dent. Exam'ng. Bd. 2015).

On May 6, 2015, the Board issued its Final Decision and Order, revoking Registrant's license to practice dentistry.<sup>3</sup> Final Decision and Order, at 2, *In re Kregenow*. The Board found that Registrant had engaged in unprofessional conduct, which included, *inter alia*, "[a]dministering, dispensing, prescribing, supplying or obtaining controlled substances . . . other than in the course of legitimate practice, or as otherwise prohibited by law." Wis. Admin. Code § DE 5.02(6) (cited in Final Decision and Order, at 2). The Board further found that Registrant had "elected to retire from the practice of dentistry" and revoked his license to "ensure protection of the public, rehabilitation of Respondent and general deterrence." *Id.*

Based on the Board's order, I find that Registrant no longer possesses authority to dispense controlled substances in Wisconsin, the State in which he is registered under the Controlled Substances Act.

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<sup>3</sup> This Order was obtained through an online search of the Board of Dentistry's website. Under the Administrative Procedure Act (APA), an agency "may take official notice of facts at any stage in a proceeding – even in the final decision." U.S. Dept. of Justice, *Attorney General's Manual on the Administrative Procedure Act* 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979); *see also* 5 U.S.C. § 556(e); 21 CFR 1316.59(e).

## DISCUSSION

Pursuant to 21 U.S.C. § 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823, “upon a finding that the registrant . . . has had his State license . . . suspended [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.” Moreover, the Agency has long held that the possession of authority to dispense controlled substances under the laws of the State in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner’s registration. *See James L. Hooper*, 76 FR 71371 (2011), *pet. for rev. denied*, *Hooper v. Holder*, 481 Fed. App’x. 826 (4th Cir. 2012).

This rule derives from the text of two provisions of the CSA. First, Congress defined “[t]he term ‘practitioner’ [to] mean[] a . . . dentist . . . or other person licensed, registered or otherwise permitted, by . . . the jurisdiction in which he practices . . . to distribute, dispense, [or] administer . . . a controlled substance in the course of professional practice.” 21 U.S.C. § 802(21). Second, in setting the requirements for obtaining a practitioner’s registration, Congress directed that “[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.” 21 U.S.C. § 823(f). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the Act, DEA has held repeatedly that revocation of a practitioner’s registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the State in which he engages in professional practice. *See, e.g., Sharad C. Patel*, 80 FR 28693, 28695 (2015); *Calvin Ramsey*, 76

FR 20034, 20036 (2011); *Sheran Arden Yeates, M.D.*, 71 FR 39130, 39131 (2006); *Dominick A. Ricci*, 58 FR 51104, 51105 (1993); *Bobby Watts*, 53 FR 11919, 11920 (1988).

Thus, because Registrant no longer possesses lawful authority to practice dentistry in the Wisconsin, *see* Wis. Stat. §§ 447.03(1) & 961.01(a), the State where he is currently registered, I will order that Registrant's DEA registration be revoked.

### **ORDER**

Pursuant to the authority vested in me by 21 U.S.C. § 824(a) and 28 CFR § 0.100(b) I order that DEA Certificate of Registration AK8212348 issued to John R. Kregenow, D.D.S., be, and it hereby is, revoked. I further order that any application of John R. Kregenow, D.D.S., to renew or modify this registration, be, and it hereby is, denied. This Order is effective immediately.<sup>4</sup>

Date: August 10, 2015

Chuck Rosenberg  
Acting Administrator

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<sup>4</sup> For the same reasons that the Wisconsin Board summarily suspended Registrant's dental license, I conclude that the public interest requires that this Order be effective immediately. *See* 21 CFR 1316.67.

